IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CRAIGE CONKLIN and	**:**	
BRANDI CONKLIN	**:**	
Plaintiffs	**:**	**No. 06-02256**
	:	
vs.	**:**	**CIVIL ACTION – LAW**
	:	
	:	
CARL K. and KATHLEEN MYERS,	**:**	**Non-Jury Verdict**
Defendants	**:**	

VERDICT

AND NOW, this ___ day of October 2007, it is ORDERED and DIRECTED as follows:

1. With respect to the use of the easement, the Court finds in favor of Plaintiffs and against Defendants. The original grant of the easement states:

> Plus granting easement for right of way on field road located about 200 feet North of North line of premises conveyed herein, and leading in a Northwesterly and Southerly direction, said Southerly course being the Westerly property line of premises conveyed herein. Said field road as established and in use the date first above written.

The Court finds the phrase 'said field road as established and in use' refers to the location and width of the easement and was not intended to prohibit vehicle use on the field road. It is clear from the evidence presented that the field road was used by vehicles, albeit infrequently, on or before January 31, 1974. Both Karen Myers[1] and Defendant Carl Myers testified that on a couple of occasions their father, the original grantor, drove a tractor along the Southerly course (upper portion) down to their grandfather's trailer.[2] They also testified that, both prior to and after January 31, 1974, Mr. Neupauer, the original grantee, drove his

vehicle from Little Pine Run Road along the Northwesterly portion (lower portion) of the field road to their grandfather's trailer.[3] Terry Andrews, who was the individual from whom Plaintiffs purchased the property, also testified regarding vehicle use on the field road both by Mr. Neupauer (his uncle) and himself. This use was a few times per year during hunting season or for cutting and gathering firewood. Craige Conklin and his father also testified that they drove up the easement from Little Pine Run Road to the cable at the Levan's property line in October 2005 or 2006. Thus, the evidence clearly shows that both the upper and lower portion of the easement was used for vehicular travel before and after January 31, 1974.

Defendants also asserted the easement was extinguished for vehicular use by parking farm equipment on and near the easement in the area where it turns from the Northwesterly course to the Southerly course since 1974. Initially, the Court questions whether an easement can be extinguished only for certain uses. Defendants admit that the equipment did not preclude Plaintiffs or their predecessors in title from walking on the easement, but they contend it stopped most people from driving on it. Regardless, the Court finds the farm equipment did not extinguish the easement. The Court finds that the easement was not continuously blocked. Mr. Andrews and Shawn Hale testified that they drove up the easement to cut firewood and the easement was not blocked. This occurred in 1993 or 1994. Plaintiff Craige Conklin and his father, Carl Conklin, also testified that they drove from Little Pine Run Road up the easement until he came to the cable at Levan's property line in early October 2005 or 2006. Plaintiff testified that there was a grader blade on the berm of the easement that he moved. Mr. Myers admitted that the Conklins drove on the easement in

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1 Karen Myers is the sister of Defendant Carl K. Myers.
2 Their grandfather moved into the trailer along Little Pine Run in 1966.
3 Mr. Neupauer was making payments and using the property prior to January 31, 1974. From the testimony

early October. Mr. Myers also admitted that he used the equipment during different seasons, but he contended it was a trade-off system. However, even if it only took minutes to move one piece of equipment so it could be used and to put another in its place, it would break the continuousness of the impediment.

The Court finds the language 'said field road as established and in use' does not prohibit vehicle use; instead, it restricts the easement's location, course and width of the cartway, which the court finds is approximately 10-12 feet based on the testimony of Jeffrey Brooks, a professional engineer.[4] Plaintiffs are permitted to use vehicles on the easement, and Defendants are enjoined from placing objects on or about the easement or otherwise interfering Plaintiff's use thereof.

2. The Court finds in favor of Defendants and against Plaintiffs with respect to Counts III and Counts IV of Plaintiff's complaint, which seek money damages for loss of use and malicious slander of title, respectively. The Court finds Plaintiffs have not met their burden of proof for these claims, especially with regard to the amount of damages.

By The Court,

_____
Kenneth D. Brown,
President Judge

cc: Marc Drier, Esquire
J. Michael Wiley, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)

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presented, it appears that the deed was conveyed to Mr. Neupauer after the final payment was made.
4 This ruling does not address and is not intended to address the issue of whether or not Plaintiffs need a permit to use the easement as their driveway.